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Reporting Guidelines for Monetary and In-Kind Donations Received by Non-Profit and Tax-Exempt Charitable Organizations

Many non-profit charitable organizations qualify under federal and California law to receive tax-deductible monetary (cash) and in-kind (non-cash) donations to help them meet their objectives. Qualifying organizations may be a corporation, trust, community chest, fund, or foundation if they are organized and operated exclusively for: religious, charitable, scientific, literary, or educational purposes; fostering national or international sports competitions; or the prevention of cruelty to children or animals.

Federal and California law require all charitable organizations to maintain accurate financial records, including records of donations received. Additionally, donors will need written acknowledgements to claim an income tax deduction for certain types of donations and for donations exceeding certain dollar amounts. Finally, if a tax-exempt organization regularly conducts business activities, it may be subject to federal and state income tax.

Non-Profit Does Not Mean Tax-Exempt. Non-profit organizations qualified to receive tax-deductible charitable donations generally are eligible for tax-exempt status. Although an organization has non-profit status, this does not mean the organization is tax-exempt.

For Non-Profit and Tax-Exempt Organizations. To be considered tax-exempt for both federal and California purposes, an organization generally must apply for and receive tax-exempt status from the Internal Revenue Service (IRS) and the California Franchise Tax Board (FTB). Under federal law only, churches and small charities (those with annual gross receipts normally not more than \$5,000) do not have to apply for exemption to be considered tax-exempt if they otherwise meet the requirements for exemption. However, California law requires churches and small charities to apply for exempt status. (See IRS Publication 557, *Tax-Exempt Status for Your Organization*, FTB Publication 927, *Exempt Organizations*, and FTB Publication 3500, *Exemption Application Booklet*, to obtain information about qualifying and applying for tax-exempt status.)

If a non-profit organization has applied for and received tax-exempt status from the IRS and the FTB, it may be required to file annual information returns with the IRS (IRS Form 990) and the FTB (FTB Form 199).

For Non-Profit Organizations That Are Not Tax-Exempt. If a non-profit organization has not received tax-exempt status from the IRS and the FTB, it will be subject to the same requirements as for-profit entities.

Recordkeeping and Reporting Requirements: It is important that a non-profit and tax-exempt organization meet its recordkeeping and reporting obligations, including those for ceasing operations—failing to do so may result in penalties or revocation of its tax-exempt status. To help non-profit and tax-exempt charitable organizations better understand the rules regarding their reporting requirements and the acknowledgement of charitable donations, here are some frequently asked questions and answers.

Q: Which tax-exempt organizations are required to file IRS Form 990 and FTB Form 199?

A: All tax-exempt organizations with normal annual gross receipts and pledges of \$25,000 or more must file annually with the IRS and the FTB. All private foundations, regardless of income, must file annually with the IRS and the FTB. Churches and their affiliated organizations and other religious organizations are not required to file. Certain other tax-exempt organizations also are not required to file. If you are unsure whether your organization has a filing requirement, contact the IRS or the FTB.

Q: How do the IRS and the FTB determine whether an organization's normal annual gross receipts and pledges are no more than \$25,000?

A: Gross receipts and pledges include the total amount a tax-exempt organization receives from all sources without subtracting any costs or expenses. Normal annual gross receipts and pledges are based on a three-year average (the current year and two preceding years). Organizations in existence for one year or less may have gross receipts and pledges equal to \$37,500 or less and still not be required to file. Additionally, organizations in existence for only two years may have gross receipts and pledges equal to an average of \$30,000 or less for the current and immediately preceding year and still not be required to file.

Q: What if some or all of our organization's gross receipts consist of income from the sale of goods or by providing services?

A: If a tax-exempt organization "regularly carries on" a trade or business that is not "substantially related" to its exempt purpose and has gross receipts of \$1,000 or more annually from this activity, it will be required to file separate business income tax returns with the IRS (IRS Form 990-T) and the FTB (FTB Form 109) to report its unrelated business income (UBI). UBI is subject to unrelated business income tax (UBIT), similar to a for-profit entity. However, certain business activities of a tax-exempt organization are specifically excluded from UBI, including fundraising activities where substantially all of the work performed is volunteer labor (e.g., a bake sale operated by volunteers, and the operation of a thrift store that sells merchandise, substantially all of which has been donated).

Q: How do we determine whether the business or service activity that generates income for our organization is "regularly carried on" and "substantially related" to our exempt purpose?

A: A business or service activity is considered to be "regularly carried on" when it occurs frequently and continuously and in the same or similar manner as a for-profit business. A business activity is "substantially related" to an organization's exempt purpose if the activity makes an important contribution (other than the generation of income) towards accomplishing the organization's exempt purpose.

The concepts and legal definition of what constitutes UBI can be quite complicated and will depend on the facts and circumstances of each situation. If your organization conducts a business or service activity that generates \$1,000 or more in gross receipts annually, you should consult with the IRS. (See IRS Publication 598, *Tax on Unrelated Business Income of Exempt Organizations* for additional information on this topic.)

Q: If our organization is required to file IRS Form 990 and FTB Form 199, how do we value and report non-cash donations of goods or property?

A: Donations of goods or property are valued at their fair market value at the time of the donation and are included as part of your organization's gross receipts. Both cash and non-cash donations are combined for purposes of determining your organization's normal annual gross receipts.

Q: If our organization is required to file IRS Form 990 and FTB Form 199, do we include donations of time, services, or the free use of equipment and facilities in our gross receipts?

A: No. Your organization does not report these donations as part of its gross receipts. These are not considered non-cash donations. Therefore, they are not assigned a monetary value, and there are no reporting requirements. However, if you wish to report these types of donations as part of your annual activities, they may be included on IRS Form 990 and FTB Form 199 with your program service accomplishments.

Q: If our organization is not required to file annual information returns with the IRS and the FTB, should we still be concerned about acknowledging donations?

A: Yes. The filing requirements for IRS Form 990 and FTB Form 199 are unrelated to the acknowledgement requirements for charitable donations. Your donors will expect to receive acknowledgements for donations that meet certain dollar thresholds.

Q: What types of donations should we acknowledge?

A: Single cash donations of \$250 or more or donations of property with a fair market value of \$250 or more from a single individual, require the donor to obtain an acknowledgement prior to claiming an income tax deduction. In making these donation threshold determinations, separate donations (including payroll deductions) are not combined. Thus, weekly or monthly donations are counted separately (e.g., \$10 donations on separate Sundays to a church collection plate do not have to be acknowledged in writing for the donor to be allowed an income tax deduction).

Donations greater than \$75 must be acknowledged when part of the total donation includes goods or services (e.g., purchase of a fundraising dinner ticket). The acknowledgement must provide a description and good faith estimate of the value of any goods or services provided. It must also inform the donor that the contribution deduction for tax purposes is limited to the amount of the donation minus the value of any goods or services the donor received. (Intangible religious benefits are not goods or services.)

Q: What type of acknowledgement should be given to persons who make cash donations?

A: The acknowledgement should include the name of your organization, the amount donated, and a statement that no goods or services were provided in return for the donation if that is the case. If the donor received any goods or services, the acknowledgement must provide a description and good faith estimate of the value of these goods or services. It must also inform the donor the contribution deduction for tax purposes is limited to the amount of the donation minus the value of any goods or services the donor received. (Intangible religious benefits are not goods or services.)

Q: What type of acknowledgement should be given to persons who make non-cash donations?

A: The acknowledgement letter or receipt should include the name of the organization, date and location of the donation, and a description of the donated property. For donations with a value of \$250 or more, your organization should also include a statement that no goods or services were provided in return for the donation if that is the case. If the donor received any goods or services, the acknowledgement must provide a description and good faith estimate of the value of these goods or services. There are also separate requirements for donors who make contributions of property valued at more than \$500 and \$5,000. (See IRS Publications 526 and 561 for the information donors should obtain from an organization, depending on the type of property donated and the value of the property.)

Q: Are there special rules regarding the donation of vehicles, vessels, and aircraft?

A: Yes. Recent changes in federal law impose new limits and substantiation requirements on charitable donations of vehicles, vessels, and aircraft with a value of more than \$500 to tax-exempt organizations. The organization must provide the donor with IRS Form 1098-C showing the donor's name, its taxpayer identification number, a description and vehicle identification number of the donated item, and a good faith estimate of its value.

If the organization intends to use or improve the donated item, the organization must also give the donor either a Form 1098-C or a statement certifying the intended use or improvement; the intended duration of that use; and that the donated item will not be sold before the use or improvement is completed.

If the organization sells the donated item without any significant intervening use or material improvement, the donor must also be given a statement within 30 days of the sale that certifies the proceeds from the sale and that states the sale was an arms-length transaction between unrelated parties. The statement must also advise the donor the tax deduction is limited to the value of the sales proceeds unless the organization certifies the vehicle is to be transferred to a needy individual for significantly below fair market value in furtherance of the organization's charitable purposes [See IRS Form 1098-C and its instructions for information your organization must provide to a donor within 30 calendar days of either the donation date (if the donated item is used or improved) or sale date (if the donated item is sold).]

Q: What steps must our organization take once we've decided to cease operations?

A: Once a California non-profit corporation has decided to cease operations, there are certain steps it must take to dissolve, including paying any taxes due and distributing any of the organization's remaining assets. This process will involve the California Attorney General's Office, the Secretary of State, and the FTB. If your organization is considering dissolving, consult with the Attorney General's office. (See Attorney General Form CT-603, *General Guide for Dissolving a California Nonprofit Corporation*, to learn more about this process.)

Available Resources

The following resources are available for you to learn more about the filing and reporting requirements for IRS Form 990 and FTB Form 199 and the acknowledgement requirements for both monetary and in-kind donations:

- **IRS Resources:** IRS publications, forms, and information are available at www.irs.gov or by calling the IRS toll-free at 1-877-829-5500.
- **FTB Resources:** FTB publications, forms, and information are available at www.ftb.ca.gov or by calling the FTB toll-free at 1-800-852-5711.
- **California Attorney General Resources:** The California Attorney General provides several comprehensive guides for charities on a wide range of topics. These are available at www.ag.ca.gov or by calling the Attorney General toll-free at 1-800-952-5225.
- **California Secretary of State Resources:** The Secretary of State provides sample certificate forms and instructions to help a non-profit corporation with the winding up and dissolution process. These are available at www.ss.ca.gov/business/bpd_forms.htm or by calling the Secretary of State at 916-657-5448 (not toll-free).
- **Free Seminars:** The State Board of Equalization (BOE) sponsors free one-day tax seminars throughout the state designed especially for non-profit and tax-exempt organizations. These seminars are offered several times each year with informative presentations by the BOE, IRS, FTB, and the California Employment Development Department. For additional information regarding the dates and locations of upcoming seminars, contact the BOE at 916-324-2068 or visit www.boe.ca.gov.